IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 43 OF 2005

SMT.RITA COTA AND ANR., ...Appellants

Versus

JOSE FRANCIS D'SILVA AND 3 ORS., ...Respondents

Mr. J. F. Melo, Advocate for the appellants.

Coram:- R.M.S. KHANDEPARKAR, J.

Date:- 9th January, 2006

P.C.

Heard. The grievance of the appellants is that the lower appellate Court failed to consider all the points which were raised in the Appeal filed by the appellants and also failed to consider that the suit was filed by the respondents/plaintiffs without any cause of action. A perusal of the orders passed by the Courts below and the other materials on record discloses that apart from the written statement to the counter claim, the appellants did not participate in the proceedings. The sole defence which was raised by the appellants in answer to the case putforth by the respondents is that the respondents have purchased the property by a deed of sale which was obtained by fraud. Since it is the contention of the appellants that the deed was obtained by fraud, it was necessary for the appellants to establish the same by producing cogent evidence in support of the said plea. Mere raising of the plea that the deed was obtained by the respondents by fraud would not be sufficient to non-suit the respondents.

Even the plea regarding absence of cause of action was not raised in the written statement and the same was sought to be raised only at the first appellate stage. However, considering the pleadings in the plaint,

the said contention was found to be devoid of any substance. No fault can be found in respect of that part of the finding of the lower appellate Court. Merely because the appellants might have raised a number of points in the matter, there cannot be any obligation on the part of the first appellate Court to consider all those points, unless it is shown that all those points do arise for consideration in the facts and circumstances of the case. Mere enumeration of the points, without disclosing how they are relevant to the facts of the case, will not require the Court to consider such points. Unless it is shown that the points do arise for consideration in the facts and circumstances of the case and yet the lower Court had failed to consider the same, it would not give rise to any substantial question of law for interference of this Court under Section 100 of C.P.C. There is no case for interference. Hence, the second appeal is rejected.

R.M.S. KHANDEPARKAR, J.

ssm.